

## APPEAL NO. 010647

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 26, 2001. Initially, there were two issues of compensability and disability to be determined; a third issue of timely notice to the employer of the injury was added without objection and considered at the CCH. The hearing officer determined all issues adversely to the appellant (claimant). The claimant appealed and the respondent (carrier) provided a response, urging that the hearing officer be affirmed.

### DECISION

Affirmed.

In this case, the issues turned completely on which witnesses were determined to be most credible. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Section 409.001 requires that an employee notify the employer of an injury by the 30th day after the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. Whether, and if so, when notice is given is a question of fact for the hearing officer to decide. There was evidence from which the hearing officer could determine that notice was untimely.

We affirm the decision and order of the hearing officer.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge